

7.1 UTILITY USERS TAX ORDINANCE AND BALLOT MEASURE  
Consideration of a Resolution Placing a Proposed Utility Users Tax Ordinance on the November 7, 2006 Election Ballot for Voter Consideration and Related Election Procedures and Consideration of the Ballot Measure Language and Whether to Participate in Ballot Arguments

Contact Person:

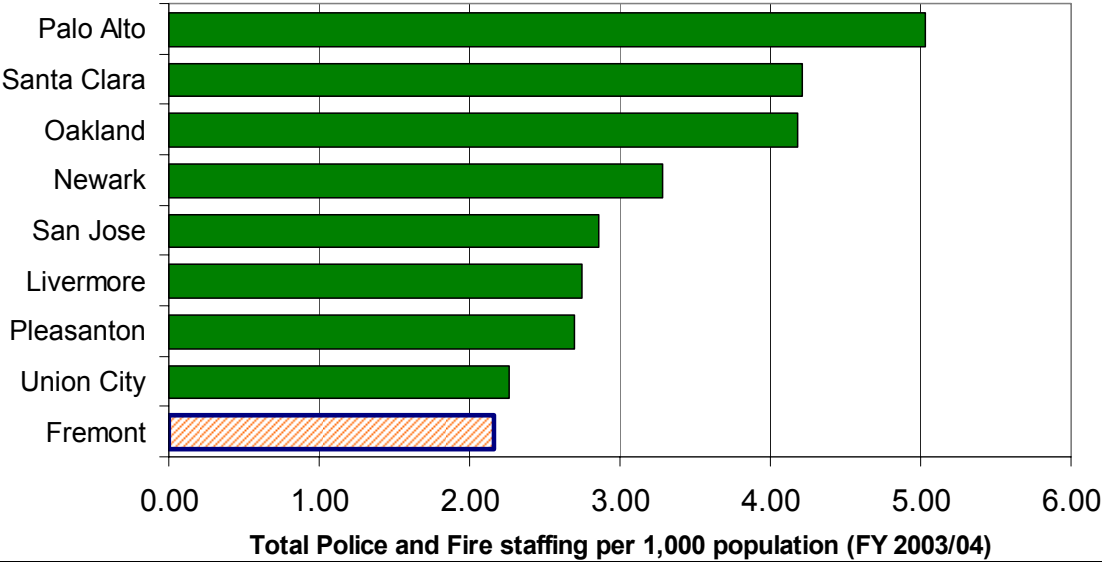
Name:	Lisa Goldman	Christine Daniel
Title:	Intergovernmental Relations Mgr.	Deputy City Manager
Dept.:	City Manager’s Office	City Manager’s Office
Phone:	510-284-4012	510-284-4008
E-Mail:	lgoldman@ci.fremont.ca.us	cdaniel@ci.fremont.ca.us

**Executive Summary:** In response to Council comments at a June 26 work session, staff has prepared a utility users tax (UUT) ordinance for the Council’s consideration. Staff recommends that the ordinance be placed on the November, 7, 2006 ballot for voter consideration. Should it be approved by a majority of the voters, the proposed ordinance would levy a four percent tax on the consumption of gas and electricity. It would be limited in duration to six years unless renewed by the voters, require the creation of a community oversight committee, and include exemptions for low-income users and caps for the largest users.

In addition, in order to place the proposed ordinance on the November 7, 2006 ballot, state election law requires that certain procedures be followed by Council. First, Council needs to approve the language for the ballot question. Second, Council needs to determine the process for submission of an argument in favor of the measure. Third, Council needs to adopt a resolution requesting the services of the Registrar of Voters of Alameda County to conduct the election and directing the City Attorney to submit an impartial analysis to the City Clerk. Finally, staff recommends that the Council also consider adopting a resolution to establish the Community Oversight Committee that will review the revenues generated by the tax, should it be approved by the voters, and delegate authority to the City Manager to appoint its members.

**BACKGROUND:** Like most California cities, Fremont faces an uncertain economic future. Years of State takeaways of City dollars, coupled with a serious recession in the early years of this decade, have taken their toll on the City’s finances. In response, the City has engaged in a multi-year effort to address the ongoing structural gap in the City’s budget that emerged during the recession. The City’s carefully planned actions included service reductions, cost saving measures, and fee increases to more fully recover costs of service. These efforts notwithstanding, the FY 2006/07 budget the City Council adopted on June 6, 2006, is balanced, however costs will once again exceed income, and the City will have to spend all of its checking account and dip into its savings account to pay the bills.

The City has been fiscally responsible during this budget crisis, reducing spending and decreasing services, while at the same time working to attract and retain retail in order to increase our income. Unfortunately, this fiscal responsibility has come at great cost to the Fremont community. Residents and business owners rely on the City to provide a broad range of services. However, the consequences of these budget reductions have been severe. With limited staffing, we cut our crime prevention efforts and dropped our response to low-priority police calls. We closed a fire station on the west side of town and implemented rotating station closures at four other stations. The following chart shows how the City of Fremont’s very low public safety staffing compares to that of other local cities.



In addition to reducing our public safety staffing and services, we deferred street repair. This provided some short-term budget relief but has led to an increase in our pothole problem and ultimately means that more expensive maintenance will be required in the future. We eliminated all support for supplemental hours at the four Fremont libraries, and we eliminated park events like the summer concert series. The City has had to postpone the construction of its new senior center, even though the number of seniors in Fremont is increasing dramatically.

It's clear that the City cannot continue on this path. For that reason, staff has spent the past 18 months working with the community to determine what the right service levels are, and how we can achieve those levels now and in the future.

**State Laws Affecting Local Taxes:** Over time, the relative ability of cities to levy taxes has been significantly restricted through the passage of state laws, most notably the voter-approved Proposition 13 in 1978, Proposition 62 in 1986, and Proposition 218 in 1996. While many other state laws have been enacted that affect local revenue raising authority, these three initiatives have produced the most substantive changes relative to new tax levies.

Differences Between General and Special Taxes: The passage of Propositions 13, 62, and 218 created important distinctions between types of taxes and the voter approval needed to enact such taxes, and imposed additional procedural requirements. The first major change created the distinction between *general* and *special* taxes. Since 1978, all local taxes fall into either one of these categories. A *general tax* refers to any tax imposed for general governmental purposes. A *special tax* is imposed for specific purposes, such as benefit assessments or parcel taxes for library or public safety districts.

Voter Requirements for General and Special Taxes: This distinction between general and special taxes also created specific voter approval requirements need to enact either type of tax. To enact a *general tax*, a majority vote (50% + 1) is required. The votes on general taxes must be consolidated with a regularly scheduled general election of city council members. To enact a *special tax*, a 2/3 majority (66.7%) is required. The vote on a special tax may be held either in conjunction with or outside of the regular council general election process at a special election.

**Discussion:** In mid-2005, the City Manager appointed an ad-hoc Community Task Force, comprised of Fremont residents and business owners, to consider strategies for the City's long term fiscal health and help develop a plan for the City. The Task Force had several purposes: help facilitate communication with residents and groups within the community, share information about the City's priorities, and provide feedback on how to address the City's needs and priorities.

In October, several members of the Community Task Force increased their commitment even further by forming a Speakers Bureau. Members of the Speakers Bureau met with a wide array of diverse community groups and stakeholders, with the goal of assessing neighborhood priorities and evaluating community feedback. Those meetings, plus an interactive mailer we sent out to the community asking people to prioritize City services, a similar form on our website, and articles in the Citywide newsletter, generated more than 4,000 responses from members of the Fremont community.

In late May, City staff and the members of the Community Task Force met one last time to review all of the feedback received over the past 18 months and develop a recommendation for the City Manager on the most fiscally responsible plan for Fremont. The Task Force concluded that in order to provide and maintain services at the desired level expressed by the community, the City cannot rely on cost saving and service reduction measures alone. The Task Force recognized that the City needed additional, locally controlled revenue for the General Fund. The Task Force concluded that imposition of a general tax to help fund basic services is necessary, and suggested that the tax be in the form of a utility users tax. They also suggested that the Council consider including a sunset clause, caps for large users, exemptions for low-income users, and a Community Oversight Committee. Within that general framework, they also discussed which utilities to include in the tax, the length of the sunset (five to ten years), and the rate of the tax.

On June 26, 2006, the City Council held a Work Session to discuss a possible revenue measure. The City Council considered examples of some basic General Fund services that were affected by budget reductions and the cost of those services:

<b>Police Department:</b> Add 22 more patrol officers	\$3.1M
<b>Fire Department:</b> Add 1 additional fire company and end brown outs	\$2.5M
<b>Maintenance:</b> Conduct 3 more major street repair projects/year	\$3.0M
<b>Parks and Youth:</b> Fix large playgrounds	\$2.0M
<b>Libraries:</b> Restore supplemental hours	\$900K
<b>Senior Services:</b> Restore evening meal program, close budget gap	\$100K
<b>Total</b>	<b>\$11.6 M</b>

The Council also discussed the various elements of a possible utility users tax. These elements are described in detail below.

**Utility Users Tax Elements:** A UUT can be levied on gas, electricity, phone (wired and wireless), cable television, water, sewer, and garbage. One hundred forty-five cities in California levy a UUT, with rates ranging from 1% to 11%. The average rate is 5.5%. Of the 145, not all cities levy UUTs on all eligible utilities; 143 cities levy the tax on gas and electricity, for example, while 141 cities levy the tax on telephone. (Recent interpretations of the federal excise tax may make it difficult for these cities to collect the UUT on long-distance calls.) The following table shows the Alameda and Santa Clara County cities that levy a UUT and the rate of the tax.

<b>Alameda County</b>	<b>Rate</b>	<b>Santa Clara County</b>	<b>Rate</b>
Alameda	7.5%	Cupertino	2.4%
Albany	7.0%	Gilroy	5.0%
Berkeley	7.5%	Los Altos	3.5%
Emeryville	5.5%	Mountain View	3.0%
Hayward	5.0%	Palo Alto	5.0%
Oakland	7.5%	San Jose	5.0%
Piedmont	7.5%	Sunnyvale	2.0%
San Leandro	6.0%		

**UUT Base:** The draft ordinance proposes to levy the tax on gas and electricity. PG&E already administers UUTs for other cities and can easily update its computer system to reflect the imposition of a UUT in Fremont. PG&E would not impose a cost on the City of Fremont for this service, so no additional City staff would be needed to administer the tax. With the other utilities, the impacts of administration could be greater. Some utilities, like the Alameda County Water District and the Union Sanitary District, for example, do not administer UUTs anywhere in their service areas. Setting up such a system could be difficult and costly for both the utility and for the City if they chose to pass along the cost. Although many cities levy a UUT on phone service, as noted above, the collection of such a tax can be costly because of the possibility that there are a large number of phone companies offering service in Fremont.

**UUT Rate:** The draft ordinance includes a 4% tax rate, which would raise approximately \$8 million annually before the imposition of caps for large users and exemptions for low-income households. (Caps and exemptions are discussed below.) The following table shows the average monthly cost of a 4% tax on gas and electricity. The data is based on actual PG&E revenues from calendar year 2005. Because this is an average based on the bills from all PG&E customers, individual bills will differ based on actual consumption of gas and electricity.

<b>Taxpayer</b>	<b>Average Monthly Bill</b>	<b>Average Monthly Tax at 4%</b>
Single family residence (gas and electricity)	\$103.25	\$4.13
Small business (electricity only)	\$351.13	\$14.05
Medium business (electricity only)	\$4,774.06	\$190.96
Large business (electricity only)	\$101,364.91	\$4,054.60
Commercial gas	\$444.00	\$17.76
Industrial gas	\$2,320.50	\$92.82

***UUT Exemptions and Caps:*** If the enclosed draft UUT ordinance is approved by the voters, there are specific exemptions which provide that the tax may not be imposed when it would violate the Constitution or laws of the United States or of the State of California; and the tax may not be applied to any other government entity, such as the Fremont Unified School District or Washington Hospital.

In addition to the specific exemptions described above, the draft ordinance provides exemptions (in whole or in part) to the imposition of the tax in order to ensure that the tax will not result in a disproportionate burden being placed on low-income households or very large businesses that consume significant amounts of power.

The draft ordinance includes an exemption from the imposition of the tax for low-income households participating in PG&E's California Alternate Rates for Energy (CARE) program (or any similar successor programs). The CARE program provides a 20% discount on monthly bills for qualified low or fixed-income households. To qualify, a household of one to two people can have a combined income no higher than \$28,600 for the period June 1, 2006, to May 31, 2007. The income threshold increases with the number of people in the household, to a high of \$54,300 for a household of six people. (For each additional resident of the household, the income threshold increases by \$6,900.) Participants in the CARE program must reapply for the program every two years. Because this program is solely administered by PG&E, there is no administrative cost to the City to provide this exemption to the imposition of the tax.

According to PG&E, 9,604 Fremont households were participating in the CARE program in May 2006, and PG&E received \$5.9 million from its Fremont CARE customers in calendar year 2005. Thus, the City will forego approximately \$237,000 in tax revenues by granting an exemption to the imposition of the tax for CARE customers. The amount of foregone revenue each year will fluctuate somewhat based on the number of households participating in the CARE program.

In addition to providing an exemption to the imposition of the tax for low-income households, the draft ordinance also provides some rate relief to the largest utility users in the business community. This is a common practice among cities that levy a UUT, and PG&E will administer such caps at no cost to the City. The draft ordinance provides the largest utility users, those in PG&E's "E20" tariff classification, with the option of paying either a 1% rate on their gas and electricity bills or a \$50,000 payment in lieu of the 1% tax, whichever is less. (E20 businesses have an average electricity demand of 1,000 kilowatts or more per month.) According to PG&E, there were 23 businesses in the E20 tariff classification in calendar year 2005. Because of confidentiality rules, PG&E cannot tell City staff which businesses are in the E20 category at this time. (Should the voters pass the ballot measure in November, PG&E would work with the City to identify these businesses and adjust their tax rate accordingly.) However, City staff has had discussions with several large utility users in Fremont to apprise them of the potential for a tax and discuss the proposed cap for large users. They are generally supportive of the rate structure included in the proposed ordinance.

Staff has used the E20 rate classification for electricity as the basis for the definition of a "Large User" that would be subject to the 1% tax rate (or payment in lieu of the tax). The gas rate classifications used by PG&E are not identical to their electricity rate classifications, so staff has been working with PG&E to make sure that the largest gas consumers are also included in the E20 classification of largest electricity users. While staff and PG&E believe this is the likely outcome based on the amounts of power these types of businesses consume, the proposed ordinance does allow the Council to establish additional exemptions in the future should that become necessary to avoid a disproportionate impact on a class of users.

***UUT Accountability:*** The draft UUT ordinance includes a six-year sunset clause. Under a sunset clause, the tax will end at a specific time unless the voters agree to renew it. By State law, renewal can only occur when one or more Council seats are also up for election. For Fremont, that means that the tax can only be reauthorized by a majority vote of the voters in November of even-numbered years. With a six-year sunset clause, the tax will expire six years after it goes into effect, unless it is renewed by the voters.

Since the proposed UUT is a general tax measure, a Community Oversight Committee will help ensure greater accountability for the use of the tax revenues. The draft ordinance requires the creation of such a committee. The Community Oversight Committee would meet to review how much money is generated by the tax and how that money is spent. The Committee could then make recommendations to the Council on the use of the tax revenues, and it could report its findings to the community. The proposed

ordinance provides that the Council may establish the composition and duties of the Committee by resolution. Based on comments from the Council at the June 26<sup>th</sup> Work Session, staff recommends that the Council consider a resolution establishing the committee in the event the ordinance is passed, and delegating authority to the City Manager to appoint members to the Community Oversight Committee. Staff further recommends that the Committee include five members representing both residential and business taxpayers, and that the members be appointed to three-year terms and serve no more than two terms.

**Election Details:** On June 13, 2006, the City Council called for the general municipal consolidated election for Tuesday, November 7, 2006, by passing Resolution No. 2006-48. In order to place the proposed utility users tax ordinance on the ballot for the November 7, 2006 election, there are three additional issues that require Council direction. First, Council needs to approve the language for the ballot question. Second, Council needs to determine the process for submission of an argument in favor of the measure. Third, Council needs to consider a resolution requesting the services of the Registrar of Voters of Alameda County to conduct the election and directing the City Attorney to submit an impartial analysis to the City Clerk.

**Ballot Question Language:** The State Elections Code requires the ballot measure to be printed in the ballot pamphlet in the form of a “yes or no” ballot question of no more than 75 words. The ballot question must include a true and impartial statement of the nature of the ballot measure. Staff has drafted two possible ballot questions for Council consideration. Both of these questions are within the 75-word limit.

1. To help preserve Fremont’s safety and quality of life and maintain essential general fund services such as police, fire, and street maintenance, shall an ordinance be adopted to establish a utility users tax on gas and electric service only that cannot exceed four percent and that is limited to six years, and that establishes a Fremont taxpayers’ committee to oversee expenditure of the funds? YES NO
2. To help preserve the safety and character of Fremont and maintain essential general fund services such as police, fire, and street and park maintenance, shall an ordinance be adopted establishing a gas and electric utility users tax of four percent, limited to six years and subject to independent annual financial audits, and establishing an independent Fremont taxpayers’ committee to review expenditures? Yes NO

**Ballot Argument:** The State Elections Code also allows the City Council to determine its interest in authoring an argument in favor of the ballot measure for the UUT. The Elections Code provides for arguments to be filed with the City Clerk as the Elections Official. Arguments of no more than 300 words each for and against any ballot measure will then be included in the Voters Sample Ballot. The arguments must be submitted to the City Clerk by 5:00 p.m. on Friday, August 11, 2006, and any rebuttals (of no more than 250 words) must be submitted by 5:00 p.m. on Monday, August 21, 2006. If there is no argument put forward in opposition to the ballot measure, then there will be no rebuttal argument.

The arguments can be authored by a maximum of five eligible voters. The code also requires that only one argument for and one argument against each ballot measure will be accepted by the Elections Official, and provides for an orderly process in determining who is eligible to submit a statement. If more than one argument for or more than one argument against the measure is received by the deadline, per the Elections Code, the City Clerk must select only one argument for and one argument against, giving preference and priority in the following order to:

1. The legislative body, or member or members of the legislative body authorized by that body.
2. The individual voter, or bona fide association of citizens, or combination of voters and associations, who are the bona fide sponsors or proponents of the measure.
3. Bona fide associations of citizens.
4. Individual voters who are eligible to vote on the measure.

The City Council has several options regarding the preparation of ballot arguments. In order for the City Council to authorize an argument to be given preference, as identified above, the Council may either: (1) author an argument in favor of the measure as a whole body (subject to the Brown Act considerations outlined in the next paragraph); (2) authorize up to two Councilmembers to author and sign the argument, and authorize the remaining Councilmembers, to use their titles as members of City Council

to sign the argument; or (3) authorize up to two Councilmembers to author and sign the argument, and have three other eligible voters who are proponents sign. If the Council chooses options (2) or (3), the Council will have delegated full authority to the identified Councilmembers to author the measure, and it would not be necessary to return to the whole Council at a regular meeting to finalize the language of the argument. Alternatively, the City Council may choose to have other members of the Fremont community author the argument, in which case the second priority position for acceptance of the argument is sponsors or proponents of the measure.

If the City Council decides to author an argument as a whole body, this could be accomplished in several ways in light of the Brown Act. The Council could write the argument in an open session; or delegate up to two Councilmembers to prepare the argument and present the draft to the whole Council for approval in an open session.

**ENCLOSURES:**

- Draft Resolution attaching draft Utility Users Tax Ordinance
- Draft Resolution establishing the Community Oversight Committee and delegating authority to the City Manager to appoint the members of the Community Oversight Committee
- Comparison of Bay Area cities' per capita revenues and property tax shares
- Comparison of Alameda County cities and locally controlled taxes
- List of cities that impose a Utility Users Tax

**RECOMMENDATIONS:**

1. Approve the wording of the ballot question.
2. Adopt a Resolution submitting a utility users tax ordinance to the voters at the November 7, 2006 election, identifying the language of the ballot question, requesting the Alameda County Registrar of Voters conduct the election on behalf of the City of Fremont, and directing the City Attorney to prepare the impartial analysis for the measure.
3. Determine if the City Council will either: (a) author a ballot argument as a whole body of the Council, or (b) delegate authority to up to two Councilmembers to author the ballot argument, and either (a) authorize the remaining Councilmembers to sign the argument and use their titles, or (b) delegate authority to the Mayor to sign on behalf of the entire Council
4. Adopt a resolution establishing the Community Oversight Committee that will review the revenues generated by the tax and how those revenues are spent, and delegating authority to the City Manager to appoint members.